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ABSTRACT

This handbook describes the effects of Title IX of the Education Amendments of 1972 and of Title V of the Rehabilitation Act of 1973 on employment practices in educational institutions. After an introduction to affirmative action, the Rhode Island Board of Regents' regulations dealing with equal employment opportunities are explained. An overview of Title IX is then presented with guidelines for employment interviews, transfers, and promotions. The handbook concludes with an overview of Title V. (MK)

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EQUAL EMPLOYMENT OPPORTUNITY

TRAINING ON:

AFFIRMATIVE ACTION

TITLE IX (SEX BIAS)

HANDICAPPED

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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INTRODUCTION

WHAT IS AFFIRMATIVE ACTION?

Affirmative Action is the action to be taken by the RIDE through positive and result-oriented programs and plans to remedy patterns and practices of discrimination in employment because of sex race, color, creed, religion, national origin, ancestry, handicap, place of residence, economic or social conditions as mandated by state and federal laws.

The purpose of Affirmative Action programs is to remove the institutional and cultural barriers that women and minorities now encounter in seeking employment and promotion and, thereby, redress the historic imbalance of equal representation in the job market. Affirmative Action programs' goals and objectives are aimed at eliminating the existing discriminatory obstacles to equal employment opportunity as well as other corrective measures.

Because of the significance of the consequences of years of past systematic discrimination, the legal wrong ends only when all consequences of past discrimination have been eliminated. We must make full use of effective Affirmative Action programs to bring closer to reality the day when all Americans can compete for education and jobs on an equal basis of merit without preference and without discrimination.

Affirmative Action can make the difference for women, minorities, and the handicapped to compete equally in the job market for whatever opportunity their desires, abilities and potentials may dictate without fear of artificial barriers hindering their motivation and success.

Affirmative Action is a tool for change!

REGULATIONS FOR THE IMPLEMENTATION
OF THE REGENTS' POLICY ON
EQUAL EMPLOYMENT OPPORTUNITY

Executive Order #14, signed by Governor Philip Noel on January 22, 1974, stated in part:

"State agencies disbursing financial assistance, including but not limited to loans and grants, shall hereafter require recipient organizations and agencies to undertake affirmative action programs designed to eliminate patterns and practices of discrimination. At the request of the State Equal Employment Officer, state agencies disbursing such assistance shall develop, in conjunction with the State Equal Employment Officer, regulations and procedures necessary to implement the goals of nondiscrimination and affirmative action."

On August 24, 1977, the Board of Regents for Education passed, in support of this Executive Order, A Policy for Equal Employment Opportunities, which called for:

"The Rhode Island Department of Education and the public tax-supported institutions of higher education and local school districts to pursue positive and aggressive measures to support and fulfill the Board's commitment to equal employment opportunity..."
"In support of this commitment the Board of Regents for Education... shall require the creation of written programs of affirmative action that will insure nondiscrimination in employment and which include remedies to overcome the effects of past exclusions."

The Deparment's EEO Unit is charged with developing the affirmative action plan for the department and monitoring compliance.

Unlike past years when affirmative action was "Regents' Policy," it is now "Regents' Regulations."

The Board of Regents for Education, through the Commissioner, is charged with the ultimate responsibility for the enforcement and monitoring of affirmative action plans for the Department, public tax-supported institutions of higher education, and local education agencies.

The EEO Unit of the RIDE, is charged with developing strategies for addressing directly those groups of persons who have suffered most noticeably from the effects of unequal employment opportunity and treatment. These persons represent "protected groups" and the protected groups are, women, minorities and the handicapped.

The Department is currently using for minority AA employment purposes, members of four groups identified by the USOC. Protected Minorities, by OCR definition include: Blacks (Negroes), Native Americans (Indians), Orientals (Asians), and Spanish Surnamed Americans.

It should be noted that one of the goals of the Department relative to Affirmative Action is to bring equity to each bureau. In other words, we shall affirmatively attempt to recruit and hire women, minorities, handicapped and white males as well in an attempt to provide equity of representation throughout the Department.

The RIDE Affirmative Action Plan for 1977-78 is available for your review upon request. Grievances of discrimination should be directed to the Equal Employment Opportunities Unit, 277-2648.

TITLE IX

I. WHAT IS TITLE IX?

Federal Regulation Title IX of the Education Amendents of 1972 states:

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance..."

Although the law was passed by Congress in 1972, the regulations were not issued in final form until 1975 and became effective July 21, 1975.

II. WHY WAS IT NECESSARY?

Although Title IX prohibits discrimination on the basis of sex against any female or male, it has been historically true that females have been and continue to be discriminated against because of their sex at every level of the educational process including employment. With the ever increasing participation of females in the national workforce, past discriminatory practices in the educational system have resulted in a widening disparity of wages earned between men and women.

III. WHAT DOES IT DO?

In order to assure that no one is discriminated against on the basis of sex by any educational agency, institution, or recipient of federal funds, Title IX specifies several actions which

each institution must complete by specific dates to be in compliance with the law. These are:

By October 19, 1975

- Designate an employee to be responsible for Title IX
- Develop andpublish a complaint or grievance procedure for students and employees.
- Notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, units of collective bargaining agreements, recruitment and referral sources for appointment and admission - of the intent to comply with Title IX
  - the essence of Title IX
  - the person responsible for Title IX
  - the procedure for complaints

By July 21, 1976

- Institutional evaluation completed and on file, including policy modifications and plans for remedial action.
- Remedial steps undertaken
- Assurance Form 639 A filed with OCR, D. HEW
- Compliance achieved in all areas with the exception of athletic and physical education programs in secondary and post-secondary institutions. Elementary athletic and physical education programs must be in compliance as of this date.

By July 21, 1978

- Athletic and physical education programs of secondary and post-secondary institutions are to be in full compliance with Title IX.
- All remedial actions identified in the institutional self evaluation must be completed.

We are now in the final transition period. July 21, 1978 is the outside deadline for compliance.

IV. COVERAGES

Title IX applies to all educational programs receiving federal funds from pre-kindergarten through graduate school with particular emphasis on:

Admissions - No otherwise qualified student can be rejected on the basis of sex.

Counseling - Materials and appraisal methods must be free from sex bias and stereotyping. Course enrollments must be reviewed for disproportionate numbers of one sex and corrective action implemented.

Athletics - Equal opportunities for physical education and athletic programs must be available to students of both sexes.

Employment - Applications, personnel policies, procedures, including placement salary, promotional and termination benefit practices must be analyzed and continually monitored to assure equal opportunity for both sexes. Remedial steps undertaken to correct inequities.

V. EXEMPTIONS

1. Admissions to undergraduate private Colleges.

. public undergraduate educational institutions which have always been single sex.

. pre-school, elementary and secondary school unless they are vocational. If so, they are not exempt. Public elementary and secondary schools must admit everyone - and even those schools exempted from the admissions requirement must comply with Title IX treatment of students to those admitted.

2. Educational institutions with Religious Affliliations who have filed and received an exemption from the OCR.

3. Training schools for U.S. Military Services or Merchant Marine.

4. Membership practices of certain single-sex Youth Service Organizations such as Girl and Boy Scouts, YWCA and YMCA.

5. Membership practices of University based Social sororities and fraternities.

6. Sex stereotyping in textbooks and curriculum materials.

VI. WHAT ARE THE RESPONSIBILITIES OF THE STATE EDUCATION AGENCY?

As the recipient of federal educational financial assistance, it is the responsibility of the State Education Agency to assure that each local Education Agency is in compliance with the requirements of Title IX. If any area is identified as a non-compliance area, the State Education Agency must notify the LEA and recommend solutions to the problem.

As defined by the Policy, Planning and Research Department of the Office of Civil Rights:

"...the SEA has the obligation to assure itself that the LEA's are in compliance with Title IX. Where discrimination is identified it is the responsibility of the SEA to take all reasonable steps to insure that this identified discrimination ceases to exist. Such steps at a minimum, should include informing the LEA of the identified discriminatory practice and providing the Office of Civil Rights with all information relevant to the situation..."

THE PENALTY FOR NOT COMPLYING WITH THE LAW IS LOSS OF FEDERAL FUNDS.

VII. GUIDELINES FOR INTERVIEWS ON EMPLOYMENT, TRANSFER AND PROMOTIONS.

The following general and specific guidelines for what can be asked and what cannot be asked of an applicant for a position are examples of types of questions and statements.

Although these have been developed with specific emphasis on the requirements of Title IX, which prohibits discrimination on the basis of sex, any similar or other questions which may cause an adverse effect because of one's racé, age, ethnic origin, culture, color, or handicap, or any other condition which is unrelated to the requirements of the position may not be applied.

In addition, if personal information is volunteered by the applicant which is unrelated to the requirements of the position - this information must not be used as a factor in screening out from consideration these candidates.

GUIDELINES FOR

EMPLOYMENT - TRANSFER - PROMOTION

General

Any question asked, test administered, or any other criterion applied in an interview for employment, transfer, or promotion must:

- clearly relate to a requirement of the position sought
- have no adverse effect on any person on the basis of sex, race, national origin, etc.
- be applied to all applicants, regardless of sex, race, national origin, etc.

Specific

- Factual description of the job duties, both pleasant and unpleasant, should be given to all applicants, both male and female, and the qualified applicant must be left to decide for himself or herself, whether the job is a suitable or desirable one for him or her. (This guideline must apply to all positions unless specifically exempted.)
- Interviewers must not under any circumstances inquire into the marital status of an applicant for employment, including whether such applicant is Miss or Mrs.
- No applicant should be discouraged from applying for any position on the basis of sex, race, or national origin, etc.
- Interviewers shall not inquire into the following areas in an interview for employment, transfer, or promotion:
  a. parental or family status
  b. whether the applicant is the head of a household
  c. pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

Guidelines for Selection of Persons to Interview from a Group of Applicants

- Informally identify the criteria which will be applied to the selection of persons to be interviewed.
- Determine that the criteria applied do not disproportionately affect persons on the basis of sex, race, or national origin, etc.
- Determine that the criteria applied are related to job performance and educationally administratively defensible, i.e., that the criteria are reasonable.
- Insure that the criteria used are equally applied to members of both sexes.

The obligation to comply with Federal regulations is not alleviated by any state or local law, or school board policy.

Examples

Don't Ask or Say:

Do you have small children at home?
Are you married?
Do you plan to marry?
Do you plan to have children?
What will you do with your child while you are at work?
Are you pregnant?
Have you ever had a pregnancy terminated?
Do you think you could do a man's job?
I'm looking for a female secretary.
I'm looking for a male custodian.
You don't want to do this kind of job.

Instead Ask or Say:

Do you have any personal obligations which are likely to interfere with your responsibilities in this position as I have described them to you?

Do you understand the requirements for this position will frequently require that you return to work evenings and weekends?

Do you understand that this position requires considerable physical strength and stamina (describe), and that a certain level of production will be expected of you? ... Be specific. (If this question is asked of any candidate, it must be asked of all candidates.)

I'll be happy to take your application for employment. (Make your decision on the basis of qualification.)

TITLE V OF THE REHABILITATION ACT OF 1973

I. WHAT IS TITLE V OF THE REHABILITATION ACT OF 1973?

Title V of the Rehabilitation Act of 1973 requires recipients of federal contracts, subcontractors, and all organizations receiving assistance from a federal contractor to take affirmative action and provide equal employment opportunity for the handicapped.

II. WHO ARE THE HANDICAPPED?

A handicapped person is one who: 1) has a physical or mental impairment which substantially limits one or more "life-time activities" (caring for one's self, performing manual tasks, walking, speaking, hearing, breathing, learning, working); 2) has a record of such an impairment (has a history of or was misclassified as being impaired); or 3) is regarded as having an impairment (has an impairment which is not "substantially limited"but is treated as if they are substantially limited by others, or is limited only as a result of other's attitudes).

III. WHAT DOES IT DO?

Subpart B of the Regulation for Section 504 of Title V of the Rehabilitation Act of 1973, states that employers may not refuse to hire or promote handicapped persons solely because of their disability. Reasonable accommodation may also have to be made to the person's handicap, where needed.

Section 503 of Title V of the Rehabilitation Act of 1973's Regulation requires federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified handicapped individuals. The recipients of contracts are required to: include a

handicapped affirmative action clause on all contracts and subcontracts, take action to employ and advance in employment qualified handicapped individuals, and provide a written affirmative action plan for employment of the handicapped.

The following items should appear in all written affirmative action plans: that only job-related qualifications will be used, that equal pay and benefits will be provided, that reasonable accommodations to overcome the limitations of the applicant's handicap will be made, that employment practices will be modified to eliminate past discriminatory practices, that an outreach recruitment program will be undertaken, that the affirmative action policy will be disseminated to the present employees, and that an executive will be appointed to oversee these activities.

Accessibility for all employees and students is a primary necessity. Examples of reasonable accommodations might include a cassette recorder for a blind employee, changes in the physical location of the tasks to be performed, or similar actions. Under certain circumstances, an employer might find it necessary to make more extensive changes.

Failure to employ or promote an employee who is unqualified or who cannot be helped by reasonable accommodation is not discrimination. However, an employer may not reject an applicant simply because reasonable accommodation is necessary.

Pre-employment physical examinations cannot be required and pre-employment inquiry cannot be made about a person's handicapping condition although employers may ask about an applicant's ability to perform job-related functions. Employers may make an offer of employment conditional on a medical examination as long as the examination is required of all employees and no one is disqualified on the basis of a physical condition that is not job-related.